

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4247 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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MURLIDHAR TETILE MILLS

Versus

UNION OF INDIA  
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Appearance:

MR BB NAIK for Petitioners  
MR PB MAJMUDAR for Respondent No. 1  
MR RC JANI for Respondent No. 2, 3  
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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE C.K.BUCH

Date of decision: 23/07/1999

ORAL JUDGEMENT [ PER : C.K.THAKKAR, J ]

Rule. Mr. MR Shah, learned counsel appears and waives service of Rule on behalf of Respondent No.1 and Mr. RC Jani, learned counsel appears and waives service of Rule on behalf of Respondent Nos. 2 & 3. In the facts

and circumstances of the case, matter is taken up for final hearing today.

This petition is filed for an appropriate writ, direction and order quashing and setting aside the order dated 20th April, 1999 -Annex.H passed by the Assistant

Commissioner (Technical), Central Excise & Customs, Ahmedabad : I.

The case of the petitioner is that respondent nos. 2 & 3 i.e. Commissioner of Central Excise and Assistant Commissioner (Tech.), Central Excise, vide Notification No. 42/98 (N.T.) dated 10th December, 1998, determined excise duty payable by the petitioner on the basis of four chambers in each Hot Air Stenter. The liability was fixed on the basis of certificate issued by the Government Approved Registered Valuer & Consulting Chartered Engineer stating therein that the petitioner was working with four chambers.

According to the petitioner, thereafter without affording an opportunity of hearing and without complying with the principles of natural justice, by the impugned order dated 20th April, 1999, the petitioner was asked to pay excise duty on the basis of five chambers in Hot Air Stenter. The said order was illegal and unlawful. Before passing the order, neither the respondent authorities have taken into account the certificate issued by the Chartered Engineer nor the earlier order which was passed directing the petitioner to make payment on the basis of four chambers, nor an opportunity was given to the petitioner to show cause why petitioner should not be asked to pay the duty on the basis of five chambers.

Notice was issued, pursuance of which respondents appeared and we had issued Rule today. The contention of Mr. MR Shah, learned counsel appearing for the respondent no.1 was that so far as the order passed earlier on the basis of the certificate issued by the Chartered Engineer was merely a provisional one. The petitioner, therefore, cannot contend that said order was final and no action contrary to such an order could be passed. If the authorities are satisfied that in fact the petitioner was liable to pay duty on the basis of five chambers, such an action could have been taken. According to him, it was not necessary to comply with the principles of natural justice and/or to extend an opportunity of hearing. He, however, could not dispute the fact that certain documents were not considered by the authority.

In view of the fact that in the impugned order, necessary documentary evidence was not considered, such as panchanama at Annex.E to the petition as also the

certificate issued by the Chartered Engineer at Annex.G, etc., the order deserves to be quashed and set aside by directing respondent nos. 2 & 3 to apply mind and to pass an appropriate order in accordance with law.

Since we are allowing this petition on that ground, we express no opinion on the merits of the matter. Petition is accordingly allowed. Rule is made absolute to the extent indicated above. In the facts and circumstances of the case, no order as to costs.

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